

Remarks/Arguments:

This is a reply to the office action of December 29, 2006, finally rejecting all of claims 14 - 26 on 35 USC 112, second paragraph grounds. This was a new ground of rejection.

MPEP 1208.02 provides: The examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed. The Office action containing a new ground of rejection may be made final if the new ground of rejection was (A) necessitated by amendment, or (B) based on information presented in an information disclosure statement under 37 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed. See MPEP § 706.07(a).

Making the rejection “final” violated MPEP 1208.02 because the new ground of rejection was neither necessitated by amendment nor based in an information disclosure statement.

We therefore request that the finality of the rejection be withdrawn.

The second paragraph of 35 U.S.C. § 112 requires claims to set out and circumscribe a particular area with a reasonable degree of precision and particularity. *In re Johnson*, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). Some latitude in the manner of expression and the aptness of terms is permitted even though the claim language is not as precise as the examiner might desire. If the scope of the invention sought to be patented can be determined from the language of the claims with a reasonable degree of certainty, a rejection of the claims under 35 U.S.C. §112, second paragraph, is not appropriate. The claims appealed did fully apprise those of ordinary skill in the art of the scope of the invention claimed, and thus satisfied the requirement of 35 U.S.C.

§ 112, second paragraph, to particularly point out and distinctly claim the subject matter which the appellants regard as the invention.

While we believe the claims presented in the appeal brief were proper, we have nevertheless amended them above to overcome the section 112 rejections. We submit that the claims presented satisfy 35 USC 112, and that this application is in proper form for allowance.

A petition for an extension of time, an Information Disclosure Statement, and a Request for Continued Examination accompany this amendment. The art cited in the IDS was developed in a counterpart European Patent proceeding.

Respectfully submitted,

/Charles Fallow/

Charles W. Fallow
Reg. No. 28,946

Shoemaker and Mattare, Ltd.
10 Post Office Road - Suite 100
Silver Spring, Maryland 20910

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